



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5575-98

17 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 11 July 1989 for four years at age 17. The record reflects that you were advanced to FN (E-3) and served without incident until 8 September 1992 when a Navy drug laboratory reported that a urine sample you submitted on 19 August 1992 had tested positive for cocaine.

On 11 September 1992, you received nonjudicial punishment (NJP) for use of a controlled substance. Your punishment consisted of forfeitures of pay, reduction in rate to FA (E-2), and 45 days of restriction.

On 15 September 1992, you were evaluated by a medical officer and found to be a drug abuser but not drug dependent. The medical officer noted that you reported you had used cocaine intentionally in order to get out of the Navy. No rehabilitation treatment was recommended.

A Drug and Alcohol Abuse Report was filed on 26 September 1992 and reported that your cocaine use was disclosed as a result of a probable cause urinalysis on 19 August 1992. Both the medical officer and commanding officer recommended separation.

On 12 October 1992 you were notified that discharge under other than honorable conditions was being initiated by reason of misconduct due to drug abuse. You were advised of your procedural rights, declined to consult with counsel, and waived your right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended that you be separated under other than honorable conditions by reason of misconduct due to drug abuse. The Chief of Naval Personnel approved the recommendation and directed discharge under other than honorable conditions. You were so discharged on 9 November 1992.

On 25 May 1999, the Naval Discharge Review Board denied your request for recharacterization of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, low test scores, and the fact that it has been more than seven years since you were discharged. The Board considered your contentions that you had a perfect record until this incident, and that your rate should be EMFN. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your use of cocaine for which you received NJP. The Board noted the medical officer's statement that you admitted to using cocaine intentionally in order to be discharged. If that is true, you were certainly aware of the consequences of illegal drug use and your use was a deliberate and willful act. The Board also noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your contention that your rate should be EMFN is neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director